IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 677 of 1992

Ashok Anant Datar,
Shanti Kutir, Sainath Nagar,
Near Sai Temple, Kansai Road,
Kurla Camp, Ulhasnagar-4 .. Petitioner
V/s.
1) Indian Art Institute, through it's Principal, 20 B, Bhalerao Marg, Bombay 400 004

2) Indian Art Society, a Society registered under the Societies' Registration Act and a Trust, registered under the Bombay Public Trust Act, through it's Chairman, 20 B, Bhalerao Marg, Bombay 400 004

3) The State of Maharashtra, through the Director of Arts, Maharashtra State, Art School Premises, Dr. D.N. Road, Fort, Bombay 400 001 .. Respondents

Mr. S.M. Dharap for the Petitioner.
Mr. S.M. Dixit for the Respondent No. 3.
None appears for the Respondent Nos. 1 and 2 though served.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 19.08.2004.

ORAL JUDGMENT (PER - S. RADHAKRISHNAN, J.) :-

1. By this Petition, the Petitioner is challenging the validity of rules and regulations of Grant-in-Aid Code for Government recognised Institutions in the State of Maharashtra, especially Rule 63.2.1, which reads as under:-

> 63.2.1. The services of a permanent employee may be terminated by the Management without assigning any reason on giving compensation as follows:-
>
> (a) 12 months' salary (pay and allowance, if any) to the employee, if he has been in service of the Institution for 10 years or more.
>
> (b) 6 month's salary (pay and allowances, if

any), if he has been in the service of the Institution for less than 10 years.

as well as the termination order dated 12th June, 1991, based on the above rule.

2. The learned counsel appearing for the Petitioner brought to our notice that the Petitioner had joined the services of Respondent No. 1 in the year 1973 as an Assistant Lecturer and that he was also a life member of Respondent No. 2 Society. It appears that his services were duly confirmed. The Petitioner and some of his colleagues found that there was a large scale misappropriation of funds in the said institution, in view thereof, they had made certain representations.

3. In view of the above complaint and representations, chargesheet was issued on 24.2.1986 to the Petitioner. The Petitioner gave his Reply on 19.6.1986. However, the same was not proceeded with. Subsequently, the Petitioner was issued with a memo for late attendance on 7.3.1989, to which also the Petitioner had sent reply. At this stage, the Respondent did not proceed any further. Subsequently, on 12.6.1991, the Petitioner’s services were terminated abruptly by the Respondent No. 1 and 2 referring to and relying on the aforesaid Rule No. 63.2.1, which provides that a permanent employee’s services can be terminated by the Management without assigning any reason by giving

compensation of 12 months' salary, if he has been in service for more than 10 years and of 6 months salary,

if he has been in service for less than a period of 10 years, and accordingly the Petitioner was offered 12 months salary.

4. Shri Dharap, the learned counsel for the Petitioner pointed out that ex-facie, the aforesaid order of termination can not be sustained especially in the light of a Circular issued by the Director of Arts, Maharashtra State, Bombay, Respondent No. 3 herein, dated 29.1.1985. There is no dispute that on the relevant date when the aforesaid termination order was issued i.e. 12.6.1991, the said Circular issued by the Government of Maharashtra dated 29.1.1985 was in force. By the said Circular, Director of Arts, Maharashtra State has communicated to all the institutions that all the recognised institutions were directed that no employee's services should be terminated in pursuance to the aforesaid Grant-in-Aid Code Rule 63.2.1 without a proper permission of the Director of Arts, Maharashtra State, Bombay.

5. The learned counsel for the Petitioner also brought to our notice that under similar circumstances, the Hon'ble Supreme Court in **West Bengal State Electricity Board v. Shri Desh Bandhu Ghosh & Ors. SCLC Vol. 2**

1985 201, wherein the Supreme Court had considered almost a similar regulation, which provided that in case of a permanent employee, his services may be

terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof. While considering the same, the Supreme Court found that this a naked 'hire and fire' rule and it observed that the time for banishing employer employee relationship is fast approaching. The Supreme Court has also observed that it's only parallel is to be found in the Henry VIII clause. Supreme Court has clearly held such a Standing order to be arbitrary, uncanalised and drastic power to enable the employer to dispense with an inquiry and to dismiss an employee, without assigning any reason, can not be sustained at all, as the same would be clearly violative of basic requirements of natural justice, and observed as under:-

> "3. We are not impressed with the submission of the learned counsel for the Board. On the face of it, the regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked 'hire and fire' rule, the time for banishing which altogether from employer employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII clause so familiar to administrative lawyers. In **Moti Ram Deka v. North East Frontier Railway Rules** 148(3) and 149(3) of the Indian Railway Establishment Code were challenged on the ground that they were contrary to Art. 311(2) of the Constitution. The challenge was upheld though no opinion was expressed on the question whether the rule offended Art. 14 of the Constitution. Since then Art. 14 has been interpreted in several

decisions of this Court and conferment and exercise of arbitrary power on and by the State or its instrumentalities have been frowned upon and struck down by this Court as offending Art. 14. In **S.S. Muley v. J.R.D. Tata and Ors.** P.B. Sawant, J. of the Bomaby High Court considered at great length Regulation 48(a) of the Air India Employees Service Regulations which conferred similar power on the

Corporation as Regulation 34 confers on the Board in the present case. The learned judge struck down Regulation 48(a) and we agree with his reasoning and conclusion. In **Workmen, Hindustan Steel Ltd. v. Hindustan Steel Ltd.** this Court had occasion to hold that a Standing Order which conferred such arbitrary, uncanalised and drastic power to enable the employer to dispense with an enquiry and to dismiss an employee, without assigning any reason, by merely stating that it was expedient and against the interest of the security to continue to employ the workman was violative of the basic requirement of natural justice."

6. Thereafter the learned counsel for the Petitioner also brought to our notice the judgment of the Hon'ble Supreme Court in **Delhi Transport Corporation V. D.T.C. Mazdoor Congress & Ors. 1991 Vol. I CLR 152,** wherein in paragraph 203, the Supreme Court has observed as under:-

"203. Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporation being State instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of

Fundamental Rights embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Article 14 of the Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), therefore, confers unbirdled, uncanalised and arbitrary power

on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Articles 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of Law posits that the power to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the 'audi alteram partem' rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice without recording any reason in the order and without giving any hearing to the employee to convert the allegation on the basis of which the purported order is made."

7. The learned Assistant Government Pleader appearing on behalf of the Respondent No. 3 fairly stated that the said Circular was binding on Respondent No. 1 and 2 and they could not have terminated the services of the Petitioner, who was a permanent employee, seeking

recourse to the said Rule 63.2.1, without a proper permission from the Director of Arts, which was not obtained.

8. In the light of the above, we are clearly of the view that the impugned termination order can not be

sustained in law at all, specially in the light of the aforesaid two judgments of the Supreme Court, the aforesaid Rule 63.2.1, ex-facie can not be sustained in law, as the same is clearly violative of Article 14 of the Constitution of India, as the same is totally arbitrary, unreasonable and irrational. The aforesaid rule is also in violation of principles of natural justice and no employer can arrogate to himself the power to terminate the services of a permanent employee without any enquiry or without assigning any reason by paying compensation of 6 months salary or 12 months salary, as provided in the said rule. We are clearly of the view that the aforesaid Rule is patently illegal and contrary to the principles of audi alteram partem, the same is also unconstitutional as violative of Article 14 of the Constitution of India and it can not be sustained in law. The aforesaid termination order is also in violation of Government Circular dated 29.1.1985. In view of the above, Rule is made absolute in terms of prayer clause (a), (b), (c) and (d) with costs. Needless to say that while computing the back

wages, a due credit will be given to the amount already paid to the Petitioner. Reinstatement shall be granted within a period of four weeks from today and the back wages to be computed and paid within a period of two months thereafter.

(8)

9. Issuance of Certified copy expedited.

10. Parties to act on a true copy of this order duly authenticated by the Associate/Court Stenographer.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)